

Entered on Docket

March 22, 2013

GLORIA L. FRANKLIN, CLERK

U.S BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

**FILED**

**MAR 22 2013**

CLERK  
United States Bankruptcy Court  
San Jose, California

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re ] Case No. 11-56798  
GLORIA ELENA DHEMING, ] Chapter 11  
Debtor(s). ]

**MEMORANDUM DECISION RE: VALUATION DATE**

This matter is before the Court on Redwood Mortgage Investors VIII's ("Redwood") Objection to Debtor's Combined Plan and Disclosure Statement. The parties disagree as to the appropriate date of valuation, for plan confirmation purposes, of the real property located at 2787 California Street, San Francisco, California ("Property"). Debtor argues the valuation date for Redwood's secured claim is the petition date, while Redwood argues that it is the confirmation date.

This chapter 11 was filed on July 21, 2011, 18 months ago. Redwood holds a junior lien on the California property; Select Portfolio Servicing, Inc. holds the first deed of trust in the amount of \$1,554,128.79. On Debtor's amended Schedule A filed October 11, 2011, Debtor valued the Property at \$925,000. Appraisals conducted since filing have valued the property at \$1,387,500 (November 2011), and \$2,000,000 (February 2012).

1 Redwood has filed a proof of claim asserting a \$660,703.90 secured  
2 claim.

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#### **ANALYSIS**

5 The Bankruptcy Code does not specify the appropriate date to  
6 use in valuing collateral. Section 506(a) provides:

7 An allowed claim of a creditor secured by a lien on  
8 property in which the estate has an interest . . . is a  
9 secured claim to the extent of the value of such creditor's  
10 interest in the estate's interest in such property . . .  
11 and is an unsecured claim to the extent that the value of  
12 such creditor's interest . . . is less than the amount of  
such allowed claim. Such value shall be determined in light  
of the purpose of the valuation and of the proposed  
disposition or use of such property, and in conjunction  
with any hearing on such disposition or use or on a plan  
affecting such creditor's interest.

13 § 506(a) (emphasis added).

14 In keeping with this statutory language, courts use different  
15 valuation dates depending upon the purpose of the valuation. See  
16 In re Briggs Transportation Co., 780 F.2d 1339, 1349 (8th Cir.  
17 1985). For example, courts generally use the petition date for  
18 purposes of determining adequate protection under § 361, avoiding  
19 liens under § 522(f), and redemption under § 722. See In re Wood,  
20 190 B.R. 788, 792-93 (Bankr. M.D. Pa. 1996) (citing cases).  
21 However, the majority of courts agree that for purposes of  
22 determining the amount of a secured creditor's claim in the context  
23 of plan confirmation, the relevant collateral should be valued as  
24 of the effective date of the plan. Id. (citing cases); see also  
25 Alan N. Resnick and Henry J. Sommer, eds., 4 Collier on Bankruptcy  
26 ¶ 506.03[10]; Hon. William L. Norton, Jr. and William L. Norton  
27 III, eds., 3 Norton Bankruptcy Law and Practice, § 52:8, page 52-13  
28 (3d ed. 2012) ("In cases concerning confirmation of a plan, courts

1 have held that absent bad faith or excessive delay before plan  
2 confirmation, value should be determined on the date of the  
3 confirmation hearing or the valuation hearing.").

4 Representative cases following this approach are In re Ahlers,  
5 794 F.2d 388, 398 (8th Cir. 1986), rev'd on other grounds, 485 U.S.  
6 197 (1988) (for purposes of the reorganization plan, the value of  
7 the collateral is to be determined at the time for confirmation of  
8 that plan); In re Heritage Highgate, Inc., 679 F.3d 132, 143 (3d  
9 Cir. 2012) (confirmation date was the appropriate time to value  
10 collateral because the confirmed plan called for Debtors to retain  
11 ownership of the property); In re Eblen, 1991 WL 284108, at \*2  
12 (Bankr. N.D. Cal. 1991); In re Stanley, 185 B.R. 417 (Bankr. D.  
13 Conn. 1995); and In re Seip, 116 B.R. 709, 710 (Bankr. D. Neb.  
14 1990).

15 In contrast, in In re Flagler-At-First Associates, Ltd., 101  
16 B.R. 372 (Bankr. S.D. Fla. 1989), the court ruled that the petition  
17 date was the appropriate date for valuation of a secured claim on a  
18 commercial property. The bankruptcy court reasoned that § 502 and  
19 § 506 should be read together. Id. at 376. Section 502 provides  
20 that the court is to determine the amount of a claim as of the date  
21 of the filing of the petition. Thus, according to the court, when  
22 § 506 refers to "allowed claims" being "secured claims" it is  
23 intended to be consistent with § 502(b), that is, an allowed  
24 secured claim is to be determined as of the filing of the petition.  
25 101 B.R. at 376. The court interpreted the last sentence of  
26 § 506(a) as follows: "[E]ven though the value determined in a  
27 Section 506 hearing takes into account a proposed disposition of  
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1 the property, the allowed secured claim is still fixed as of the  
2 filing date." Id. at 377.

3 In In re Beard, 108 B.R. 322 (Bankr. N.D. Ala. 1989), the  
4 bankruptcy court also concluded that the petition date was the  
5 appropriate date for valuation for all purposes. Beard involved  
6 the valuation of depreciating equipment. The court found that when  
7 depreciating collateral is involved, the valuation at a later date  
8 could effect an unlawful "taking" of property without due process.  
9 Id. at 326-27. The Court opined that the last sentence of  
10 § 506(a)(1) was apparently "thrown in for 'good measure' to make  
11 clear that a creditor's property rights in a bankruptcy case are  
12 determined for other purposes as they are for the allowance of the  
13 creditor's secured claim." Id. at 326.

14 The Court does not find these latter cases to be persuasive.  
15 Using § 502 as a justification for valuing all secured claims as of  
16 the petition date would render the last sentence of § 506(a)(1)  
17 superfluous.

18 Other courts have opted for a flexible standard that turns on  
19 the equities of the case. Debtor cites In re Aubain, 296 B.R. 624  
20 (Bankr. E.D.N.Y. 2003), in which the bankruptcy court used the  
21 value as of the petition date to permit debtor to strip off a lien  
22 in her chapter 13 case. The debtor sought to retroactively strip  
23 off a junior lien that was wholly unsecured as of petition date.  
24 Over the course of the plan the real property collateral had  
25 increased in value. The court found the equities weighed in favor  
26 of using the petition date as the date of valuation, which allowed  
27 debtor to strip the junior lien.

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1       In Wood, the Debtor had upgraded the zoning of her real  
2 property during the pendency of her chapter 11 case, which resulted  
3 in an approximately \$20,000 increase in value. In determining the  
4 appropriate date of valuation of the real property to strip off a  
5 junior lien, the court reviewed the numerous cases on the issue.  
6 The court rejected the premise that § 502's reference to the  
7 petition date mandated that a secured claim be valued as of the  
8 petition date, given the language of § 506(a). The court concluded  
9 that § 506(a) is intended to be flexible, and that an equitable  
10 approach, rather than a hard and fast rule, made sense. The court  
11 set out a list of factors to be considered when determining the  
12 appropriate date for valuation: (1) the impact of the debtor's  
13 efforts on the postpetition change in value; (2) the expectancies  
14 of the parties at the time they may have made the loan agreement  
15 (if any); (3) whether the application of different dates for  
16 valuation purposes reach an absurd result; (4) the convenience of  
17 administration; (5) the equitable concept that those who bear the  
18 risk should benefit from the rise in value; (6) a resulting  
19 windfall to any one party should be discouraged; (7) the bankruptcy  
20 policy set forth in § 552(b) which extends prepetition liens to  
21 postpetition proceeds in certain situations (8) the bankruptcy  
22 policy set forth in § 362(d), which encourages the tendering of  
23 adequate protection payments to a creditor holding depreciating  
24 collateral; (9) the oft-stated policy of bankruptcy to secure the  
25 debtor a "fresh start"; (10) the result of utilizing a specific  
26 date of valuation on the bankruptcy itself including that impact  
27 upon senior and junior lien creditors; and (11) whether the party  
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1 benefitting from a delay in valuation has been responsible for that  
2 delay. Wood, 190 B.R. at 794-95.

3 Debtor cites a number of other cases in which courts used the  
4 petition date to value collateral for other purposes. The Court  
5 does not find these cases to be dispositive. Some of the cases  
6 involve depreciating collateral, In re Johnson, 165 B.R. 524, 528  
7 (Bankr. S.D. Ga. 1994) (vehicle), which raises other  
8 considerations. See Eblen, 1991 WL 284108, at \*2 (a rule that  
9 unilaterally fixes the value of the collateral at the time of the  
10 filing of the bankruptcy only protects creditors whose collateral  
11 depreciates and who have failed to take advantage of the remedies  
12 available to them - relief from stay or adequate protection - but  
13 leaves creditors whose collateral appreciates remediless). Others  
14 involve valuation of collateral for other purposes such as to  
15 determine an exemption. In re Hall, 118 B.R. 671 (Bankr. S.D. Ind.  
16 1990). Finally, In re Waters, 276 B.R. 879 (Bankr. N.D. Ill. 2002);  
17 In re Driscoll, 57 B.R. 322 (Bankr. W.D. Wis. 1986); and In re  
18 Riley, 88 B.R. 906 (Bankr. W.D. Wis. 1987) do not directly analyze  
19 the issue.

20 The Court concludes that the equitable approach set forth in  
21 Aubain and Wood may be appropriate where there are unusual  
22 circumstances. However, the Court agrees with the approach adopted  
23 by the majority of courts that the appropriate date for valuing  
24 collateral for purposes of fixing a secured creditor's claim is the  
25 confirmation date, or a date close to confirmation. The plain  
26 language of § 506(a) supports the conclusion that when the purpose  
27 of the valuation is to determine the treatment of the creditor's  
28 secured claim under a plan, and the Debtor intends to retain the

1 collateral, that the value should be set as of the date of  
2 confirmation of that plan.

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9 **CONCLUSION**

10 Redwood's secured claim shall be valued as of a date that is at  
11 or near the confirmation date of Debtor's proposed plan of  
12 reorganization.

13 Dated: 3/22/13



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15 ARTHUR S. WEISSBRODT  
16 UNITED STATES BANKRUPTCY JUDGE  
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UNITED STATES BANKRUPTCY COURT  
For The Northern District Of California

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**COURT SERVICE LIST**